Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/20880/2019**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On the 20th June 2022	**On the 15th August 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS FARAH NAHEED
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed, Counsel instructed by B Assured Law
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant resides in the United Kingdom with her sister and brother-in-law's family having entered this country on a fiancée visa on 24 April

2018. The Appellant had originally applied for entry clearance as the spouse of a settled person and this application was refused by the respondent on 14 April 2016. The Appellant appealed this decision and on 24 October 2017 her appeal was allowed on human rights grounds.

2. Further applications by the Appellant to remain as the spouse of a settled person were refused on 16 November 2018 and 5 February 2019 and an application for indefinite leave to remain as a victim of domestic violence, was refused on 2 July 2019.

3. On 13 August 2019 she submitted her current application on private and family life grounds. The Respondent refused this application on 10 December 2019 and the Appellant appealed this decision.

4. This appeal came before Judge of the First-tier Tribunal Atkinson (hereinafter referred to as the FTT Judge) on 10 March 2020 and in a decision promulgated on 20 March 2020 her appeal was dismissed. Permission to appeal was submitted and following a remote hearing before Upper Tribunal Judge Plimmer an error of law was found on 6 October 2020.

5. Upper Tribunal Judge Plimmer found the FTT Judge's decision contained two errors in law namely:

   (a) The FTT Judge failed to treat the Appellant as a vulnerable witness; and

   (b) The FTT Judge failed to place adequate weight on the fact the Appellant was a victim of domestic violence when making the article 8 assessment.

6. UT Judge Plimmer determined the case should be dealt with in the Upper Tribunal and adjourned it for a full hearing. She recorded in her decision that both parties acknowledged the Appellant was a victim of domestic abuse.

7. Before us, the Appellant and her brother-in-law, Mr Tanser Yousaf, both gave oral evidence and were cross-examined by Mr Tan. Following oral submissions from both representatives we reserved our decision.

DOCUMENTS

8. The Appellant's representatives had provided us with three separate bundles. The first consisted of 46 pages (hereinafter referred to as "the first bundle"). The second bundle consisted of 10 pages and contained an updated statement, medical evidence, the Appellant's sister's death certificate and pictures of a destroyed property (hereinafter referred to as "the second bundle"). The final bundle contained 3 pages which was a letter from the Appellant's GP (hereinafter called "the third bundle").

9. We also were provided by the Respondent with a bundle that included the original application form, a copy of the Family Order dated 8 April 2019 dismissing the application for a non-molestation order, the Appellant's husband's undertaking which prevented him from threatening and contacting the Appellant and from going within 100 metres of where the Appellant was living, her statement in support of the non-molestation order, letter from the Appellant's doctor dated 22 August 2019, supporting statements in the family proceedings and the decision letter dated 10 December 2019.

THE APPELLANT'S EVIDENCE

10. The Appellant confirmed she continued to live with her brother-in-law's family at [~], Bradford. She stated that since August 2021 she had been attending counselling sessions and felt she was benefiting from these sessions.

11. She stated that prior to 2011 she had been living at her mother-in-law's house, but after her mother-in-law passed away she returned to live with her own mother in the family home. Her mother lived off money she received from her sons in the United Kingdom and also from the sale of milk from one buffalo. Her mother died in 2017 and although her death was not registered for 12 months this delay was nothing to do with the Appellant because she was living in England at the time. It was her younger sister's husband (Mushtaq Ahmed) who had registered the death. When challenged by Mr Tan as to why her statement in the family proceedings suggested her mother had in fact died in 2013 the Appellant stated that her mother had died in 2017 and that she had not lived alone between 2011 and 2017 but had in fact lived with her mother-in-law until 2011 and thereafter had lived with her own mother until she died.

12. Her eldest sister, who had been living in Pakistan with her husband, died in January 2022 and her husband now lived with his siblings. Her sister's death certificate had been sent to her but she could not recall by whom as she suffered with constant headaches.

13. She stated she had no links to her late sister's husband and would not be able to live with him in Pakistan. She confirmed she had a younger sister who continued to live in Pakistan, but he was married to a soldier and they did not live in one particular place and in any event they had no room. She confirmed her mother and father's siblings had also died.

14. In response to questions posed by ourselves the Appellant stated neither her parents nor her younger sister's husband in Pakistan nor her sister in the United Kingdom were related to their partners.

15. The family home in Pakistan had been destroyed in an earthquake-pictures of the damaged property had been provided. She stated the property had been owned by her parents, but no steps had been taken to sell or fix the property despite it having been damaged in an earthquake.

16. When asked why she had not mentioned that an earthquake had damaged the family home when giving evidence before the FTT Judge she stated that she forgot things and that may well be why she had not mentioned it at the hearing. Her brother-in-law stated in his oral evidence that they had not been represented and he did not believe they had been asked about the earthquake. He was unsure who owned it and that his wife had not discussed it with him or anyone else to his knowledge.

17. The Appellant's brother-in-law Mr Yousaf stated he was giving evidence because he had a lot of respect for the Appellant and her mother, but he could not say why her brothers had not attended court to give evidence. He stated he was able to provide the Appellant with financial and emotional support but he would be unable to afford to support her if she was returned to Pakistan as he had his own medical issues which had led to him being off work. Whilst his own family still lived in Pakistan they would not support the Appellant as she was not their family. He believed the Appellant had no family in Pakistan other than her younger sister. He did not recall saying in the statement he made to the family proceedings that the Appellant had no family and he did not recall saying her family had no property in Pakistan.

SUBMISSIONS

18. Mr Tan adopted the decision letter and more recent skeleton argument dated 10 June 2022 and invited the Tribunal to dismiss the Appellant's appeal. He agreed the Tribunal would have to consider whether the Appellant satisfied the requirements of paragraph 276ADE(1)(vi) HC 395 before moving onto consider whether the Appellant's circumstances engaged article 8 ECHR outside of the Immigration Rules.

19. He reminded the Tribunal that the Appellant had lived in Pakistan for 42 years before coming to this country on a fiancée visa. The Appellant gave her evidence through an Urdu interpreter and despite the allegations of domestic violence there was nothing to support a claim that her ex-husband's extended family retained an interest in her. On her own evidence she has a sister who continues to live in Pakistan and the "family" owned a property which no one had sort to place a value on or attempted sell. He referred to the fact that one of the witnesses who represented her at the wedding and signed the Nikah continued to live in Pakistan and she had produced a variety of documents which suggested she had a support network in Pakistan. It was notable that her brothers failed to attend to give oral evidence and she was being supported by her sister's husband in this country. Mr Tan argued that this support could continue if she were returned to Pakistan. Whilst the Appellant argued there were very significant obstacles to her re-integrating into life in Pakistan, Mr Tan submitted this was not the case.

20. Whilst the Appellant received medication and had recently started attending counselling sessions the latest CPIN report suggested that such treatment would be available in Pakistan. The Appellant had not produced

any evidence to show such treatment was not available and the burden of proving this lay on the Appellant.

21. The Appellant relied on her medical issues to explain inconsistencies in the evidence given. Mr Tan invited us to find that those inconsistencies undermined the evidence given at the appeal hearing and raised doubts about her circumstances in Pakistan. He referred us to the inconsistencies between what she had told the Family court to what she and her brother-in-law now claimed. She claimed she could not recall telling the Family Court her mother died in 2013 but that evidence was relied on in the Family proceedings. She neglected to mention she had family (sisters) in Pakistan in those earlier statements and her brother-in-law also said the same in the Family proceedings. Mr Tan submitted that the Appellant was seeking to portray she had no family or property in Pakistan when in fact this was not the case. Neither the Appellant nor her brother-in-law mentioned the damaged property when the appeal came before the FTT Judge, but according to their own evidence to us the earthquake had already happened when they appeared before the FTT Judge.

22. The evidence now or previously relied on in either the Family Court or the FTT Tribunal suggested that the Appellant had demonstrated she was able to care for herself either for 5-6 months or 8 years depending on which version of their evidence was accepted. He submitted that with support from the United Kingdom and the presence of her younger sibling in Pakistan she would not be returned as a lone woman.

23. If the Tribunal felt it necessary to consider the appeal under article 8 ECHR Mr Tan reminded us that section 117B of the 2002 Act had to be taken into account. She did not speak English and had no independent means to support herself. Her immigration status was precarious because she did not have settled status.

24. Mr Ahmed invited the Tribunal to either find paragraph 276ADE(1)(vi) HC 395 was satisfied or to find exceptional circumstances that would engage article 8 ECHR. He reminded us that the Appellant was unrepresented before the FTT Tribunal and this was something that should be taken into account when considering possible inconsistencies or failures to mention material facts.

25. Importantly, it was accepted that the Appellant was a victim of domestic violence having been treated as a slave and physically abused. He submitted that the Appellant had been unable to rely on the domestic violence ground because she had only come on a fiancée visa but given the finding she was a victim of domestic violence had ben preserved, Mr Ahmed submitted she would have succeeded under the relevant Rule and been given leave.

26. Mr Tan relied on inconsistencies in the evidence, but Mr Ahmed reminded us that not only was the Appellant a victim of domestic violence but she was also to be treated as a vulnerable witness. Whilst there was an

inconsistency over when her mother died nevertheless a death certificate had been adduced and the respondent had not argued the document was not genuine.

27. Mr Tan had also argued that the Appellant would have had the support of the witnesses who signed the Nikah but they were simply the elders in the village and nothing should be read into that.

28. The Appellant did not have any support except from her brother-in-law and his help was limited. Her brothers did not attend the hearing and had not supported her in the way her brother-in-law had. Her brother-in-law and the counselling sessions were her support network and her brother-in-law had supported and assisted her in the FTT. She was engaging with counsellors in this country and they would be unable to provide the support she needed in Pakistan. She would return as a lone woman with nowhere to live. Whilst there was a property it was uninhabitable and unsold.

29. Mr Ahmed submitted there were very significant obstacles which engaged paragraph 276ADE HC 395 or in the alternative there were exceptional circumstances that engaged article 8 ECHR.

DISCUSSION AND FINDINGS

30. As a starting point we have approached this appeal from the standpoint that the Appellant is a victim of domestic violence. This was a finding made by the FTT Judge at paragraph [34] of his decision and it was a finding that was preserved by Upper Tribunal Judge Plimmer.

31. In considering the Appellant's evidence we have taken into account her circumstances we find the Appellant should be treated in accordance with the Joint Presidential Guidance Note No.2 of 2010: *Child, vulnerable adult and sensitive witnesses* and with regard to AM (Afghanistan) v SSHD [2017] EWCA Civ 1123.

32. There did not appear to be any dispute that the Appellant's father had died a number of years ago. There was an issue over the Appellant's mother and elder sister. We have considered whether the Appellant's mother and elder sister are deceased as both the Appellant and her brother-in-law claimed in their evidence. Contained within the bundles were two death certificates-one relating to the Appellant's mother and one relating to her elder sister.

33. At page [45] of the first bundle there was a death certificate relating to the Appellant's mother. Mr Tan, in his submissions, did not submit this document was forged or fraudulent. He referred us to the original witnesses statements made to the Family Court and submitted the Appellant had told the Family Court the Appellant's mother had died in 2013 whereas her evidence and had been during these proceedings that her mother had died in 2017, although her mother's death was registered

some 13 months after her death. The explanation provided for the late registration was that was when the death itself was formally registered by the family member.

34. The account provided to the two jurisdictions is different. In assessing the Appellant's evidence we take into account that she is a victim of serious domestic violence and that at the time that she prepared her witness statement for the Family Court she had only just escaped from that situation. Today she continues to suffer with depression and anxiety so we see no reason to reject her evidence that she found it very difficult to give that statement, and in particular to recall dates. We also bear in mind that the Appellant was giving it through a translator, and that the date of her mother's death was, in that context, of very little relevance. There does not appear to be any dispute that her mother is in fact dead. There is nothing on the face of the death certificate to indicate that it is anything other than genuine. We found the oral evidence before us on the point, in particular that of Mr Yousaf, to be credible and persuasive. Taking all of that into account we are prepared to accept that her mother did die in 2017 as claimed.

35. Contained on page [5] of the second bundle was the sister's death certificate (erroneously referred to as the mother's death certificate in the index). Mr Tan did not submit that this document was either a forgery or was fraudulent. There was nothing on the face of this document which would lead us to reject its veracity, and it was consistent with the evidence of the witnesses before us. On the balance of probabilities we accept the Appellant's elder sister is also deceased.

36. For these reasons we conclude that the Appellant's parents and elder sister are deceased. We also accept that the Appellant's remaining siblings all live in this country with the exception of one sister who is married and living with her husband in Pakistan.

37. Mr Tan submitted that the Appellant could simply return to Pakistan and live with this younger sibling and her husband, but when considering whether this was an option we took into account the evidence that he was in the army and moved around a lot. It is unlikely that army accommodation would be large enough to accommodate the Appellant. We have also taken into account the fact that culturally it would be seen as unusual and perhaps even inappropriate for a husband to take in his wife's sister on a long term basis. While that is what has happened in the UK, we note that societal attitudes may be different in the Pakistani diaspora here: we also accept the evidence of Mr Yousaf that this has arrangement has only arisen because of his particular attachment to, and respect for, his deceased mother-in-law. We also considered the fact that when the Appellant married, two elders are named as her walis on her *nikahnama*. There was no evidence to support Mr Tan's submission that either would provide a home for the Appellant and we have therefore discounted them as persons who may provide support or accommodation

to the Appellant. We see no reason to reject the evidence that these were simply respected individuals in her neighbourhood.

38. We considered what support would be available for the Appellant from her surviving family.

39. The Appellant had told us about her younger sister and her husband in Pakistan, but for the reasons given earlier we concluded they would not be able to provide any support. This left her two brothers and sister who live in this country.

40. The Appellant lives with her sister and her husband. Her brother-in-law Mr Yousaf had given evidence to us. Mr Tan had questioned why the Appellant's brothers had not attended and we concluded their absence was somewhat telling when assessing what support would be available to the Appellant. The fact they did not attend to give evidence suggested to us that the Appellant would not be able to rely on them for support.

41. Whilst there was currently support from her sister and her husband we concluded that support was limited to allowing her to live and eat with them in this country as this would not necessarily have led to any significant increase in the overall budget. There was no evidence that they would be able to financially support the Appellant were she to return to Pakistan and Mr Yousaf gave credible evidence about his own situation and the fact he would not be able to support her there.

42. If the Appellant were required to return home, Mr Ahmed argued that she would be returned as a lone woman. Whilst we were not dealing with an asylum claim we reminded ourselves that the Tribunal said in SM (lone women - ostracism) Pakistan [2016] UKUT 67 (IAC) it would be unduly harsh to expect a lone women without family support to relocate.

43. Whilst the Appellant would be returning to a country which was familiar to her (she had lived there for 42 years), she would be returning to a different situation to the one she lived in prior to joining her former husband. Before she came to the United Kingdom she had been supported by family on both sides including her former husband.

44. She no longer had had any male family members in Pakistan who could support her as she could not rely on either of her sister's husbands. Since coming to this country she had suffered domestic abuse and she had been treated as a slave by her former husband and his family.

45. It appeared to us that were she returned she would not have the support of anyone in Pakistan and she would lose the financial and emotional support she now receives in the United Kingdom.

46. The Tribunal in SM commented that "a single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are

in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited."

47. Whereas she has a support network here, in the form of her sister's family and counsellors, she would not have that level of support in Pakistan. Whilst we noted she may have obtained some of the documents from people in Pakistan, we concluded this was insufficient to support Mr Tan's submission that she would have the level of support that she would need.

48. We were provided with pictures of what was said to have been her family home in Pakistan. That home was said to have been destroyed by an earthquake and the family did not have the funds to repair the property. It was unclear why the property had not therefore been sold, but we accepted in its current condition it was uninhabitable.

49. We had some evidence about the Appellant's current medical circumstances including a letter from her doctor, dated 8 February 2022, in which the Appellant had been diagnosed with depression and had been prescribed 45mg of Mirtazapine and 40mg of Propranolol for anxiety. She had also been referred for counselling through the mental health team and a letter, dated 13 June 2022, from the Wellbeing Service confirmed that she had been referred to them in August 2021 and she had been assessed and put forward for trauma focussed cognitive behavioural psychotherapy since September 2021 which continued as at today's date. The medical evidence supported Mr Ahmed's submission that she was a woman who had been traumatised by what had happened to her and weight had to be given to what had happened to her.

50. Mr Ahmed submitted that her circumstances engaged paragraph 276ADE(1)(vi) HC 395. This paragraph allows an applicant, who is over the age of 18 and who has lived continuously in the United Kingdom for less than 20 years, to meet the requirements of this rule if she can demonstrate that at the date of application there would be very significant obstacles to her re-integration into Pakistan. The Court of Appeal in Parveen and the SSHD [2018] EWCA Civ 932 made clear that "very significant" obstacles connoted an "elevated threshold and the test would not be met by mere inconvenience or upheaval."

51. Mr Ahmed did not seek to argue that the Appellant could not access some form or medication and even some counselling, but instead argued that the totality of the Appellant's circumstances meant she met the elevated threshold test of "very significant obstacles".

52. Having regard to the totality of all the evidence we find as follows:

    (a) The Appellant had nowhere to live in Pakistan. We reject Mr Tan's submission that she would be able to live with her younger sister's family or her deceased sister's husband's house in Pakistan or that there was a habitable family home.

(b) There would be very limited financial support for the Appellant in Pakistan as we accept her brother-in-law would not be able to provide the necessary level of support needed and her brothers, in the United Kingdom do not appear to be willing or able to support her.

(c) The Appellant is a survivor of domestic violence who had been abused over a long period of time by her former husband and his family.

(d) The Appellant is taking medication for depression and anxiety and has been receiving trauma focussed cognitive behavioural psychotherapy since around September 2021 as a result of what had happened to her.

(e) Whilst there were some medicines and some healthcare support available in Pakistan, according to the latest CPIN report on medical and healthcare provisions, neither Mirtazapine nor Propranolol were listed in the CPIN as being available in Pakistan and there was no evidence to show that ongoing counselling, similar to that available in this country, would be available to her in Pakistan.

(f) Limited state or private shelters would be available in Pakistan for the Appellant but they would only be available for a short period. They would not address the fact the Appellant would not have access to the necessary level of support on an ongoing basis. It is also unclear whether the Appellant would even have access to these shelters, which exist to offer emergency support to those fleeing domestic violence.

(g) On the facts of this case we accept that the Appellant would face very significant obstacles which would engage paragraph 276ADE(1)(vi) HC 395.These obstacles would be that she has nowhere to live, no family who can support her emotionally, practically or financially. She has no work experience outside of caring for relatives. Whilst it is possible that she might be able to get a job in domestic service, as a woman on her own with no obvious male protector she would in those circumstances be vulnerable not just to societal discrimination but to sexual harassment and predation: see CPIN section 6.2. Even if she could access anti-depressant medication, it is unlikely that she would be able to access the kind of talking/CBT therapies that she is benefitting from in the UK.

53. Having considered all the evidence we therefore allow this appeal on the basis the Appellant meets the Immigration Rules and following TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109 it would be disproportionate to require the Appellant to leave the United Kingdom.

54. We have not therefore found it necessary to go on to make any detailed findings on Article 8 ‘outside of the rules’. We do however note the following. When the Appellant came to the UK she was brought here by

her husband on a fiancée visa rather than the spousal one to which she was entitled. Had he told the truth and acknowledged her as his wife, she would have been given leave to enter as a partner; when the marriage then broke down as a result of domestic violence she would have been entitled to indefinite leave to remain pursuant to section DVILR of Appendix FM. The only reason that such leave was refused under those provisions was because she entered on a fiancée visa. This was a visa arranged by the Appellant's former partner. We have heard no direct evidence from him about why he did that rather than acknowledge that she was his wife, but the obvious inference to draw from his history of abusive behaviour is that it was a deliberate strategy to weaken her position in this country: it was part of his abusive behaviour towards her. That being the case it is in our view difficult for the Secretary of State to show that it is necessary, or proportionate, to refuse to grant the Appellant leave today. But for that act of abuse, she would already have ILR. In those circumstances the potency of the countervailing factors set out in s117B is significantly diminished.

NOTICE OF DECISION

The decision of the First-tier Tribunal is set aside._We have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 10 December 2019 is allowed.

No anonymity direction is made.

Signed Date 5 July 2022

Deputy Upper Tribunal Judge Alis